

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

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BULLETIN

TO: New Hampshire Federally Chartered Banks, Thrifts, Co-ops,
Savings Banks, Trust Companies and Credit Unions

FROM: Charles N. Blossom
Insurance Commissioner

DATE: March 3, 1997

RE: Procedures for National Banks Selling Insurance

This Bulletin is to provide individuals and organizations engaging in insurance sales activity on a national bank's premises with guidance in complying with Insurance Department requirements relative to such sales.

I. BACKGROUND

Annuities Sales

On January 18, 1995, the United States Supreme Court ruled in NationsBank v. VALIC, 115 S.Ct. 8110 (1995), that the incidental powers of nationally chartered banks in Section 24(seventh) of the National Bank Act included the authority to engage in the sale of annuity products as agents of an insurance company. By decision dated August 10, 1995, the New Hampshire Bank Commissioner, Honorable A. Roland Roberge, determined that the sale of insurance company annuity products was also within the incidental powers of state-chartered banks provided under RSA 394-A:7 and Banking Department Rule Ban 520.

Pursuant to the Bank Commissioner's ruling, a state-chartered banking institution or a national bank may sell annuities provided the bank and those employees actively engaged in the sale of annuities have complied with the licensing requirements of the Insurance Department. (See Department Bulletin dated May 20, 1996.)

Insurance Sales

Section 92 of the National Bank Act permits national banks located and doing business in any place with a population of not more than 5000 inhabitants to act as the agent for any fire, life or other insurance company authorized by the authorities of the State to do business there. In Barnett Bank v. Nelson, 116 S.Ct. 1103(1996), the Supreme Court determined that, despite state laws forbidding banks or their affiliates from engaging in insurance sales, national banks could act as agents in the sale of insurance from places with fewer than 5000 inhabitants under the authority of Section 92.

As a result, RSA 384:16-b, which limits the ability of banks to sell insurance, is preempted by Section 92 for any national bank with a bona fide agency in a place with fewer than 5000 inhabitants. (See letter of Julie Williams, Chief Counsel, Comptroller of the Currency, to First Union Corporation, November 4, 1996.)

The Department's position is that all banks acting as agents in the sale of insurance in New Hampshire must comply with all applicable insurance laws, including those on licensure. In order to effectuate the Barnett ruling, while ensuring full compliance with applicable state law, this Department will license national banks and their affiliates pursuant to the requirements set forth in this Bulletin.

II. STATEMENT OF PURPOSE

This Bulletin sets forth the Department's procedures for the sale of insurance by national banks pursuant to the preemption standard announced in Barnett. The Bulletin does not attempt to answer all questions that may arise as banks enter this arena because the determination of the scope of a national bank's authority may be amended in the future by Congress or the New Hampshire Legislature. Until such time, these procedures apply to national banks located in this State. Accordingly, these procedures are not intended to and do not create a class of licensees whose status must be "grandfathered" into any statutory scheme adopted by the New Hampshire Legislature. Neither the existence of nor compliance with these procedures confers any property or other rights on licensed entities other than the right to conduct the business of insurance in accordance with these procedures until they are superseded or terminated. Moreover, these procedures may be modified by the Commissioner at any time while they remain in effect.

III. PROCEDURES FOR AUTHORITY TO SELL INSURANCE

A national bank (hereinafter "bank") located and doing business in a place with a population not exceeding 5000 as determined by the last decennial census (a "place of 5,000") may become a licensed corporate agent by complying with all licensing requirements of RSA Title XXXVII. The bank's application must include:

- a certified copy of its charter;
- a list of all licensed personnel, including at least one bank officer, who will conduct the business of insurance under the bank's license;
- a statement that the bank is located in a place with a population not exceeding 5000 as measured by the last decennial census;
- a board resolution authorizing the applying officer to make application for a corporate agent license on behalf of the bank; and
- all other information required of applicants for a corporate agent license under RSA 402:16 and 17.

A bank located in a place of 5000 may own all or part of a licensed corporate agency which is also located and doing business in a place of 5000. The agency located in a place of 5,000 must be bona fide business and comply with state law governing the organization of an insurance agency. All agents' offices must be located in the place of 5,000, which shall be the agency's business location for all licensing purposes. Each agency must be responsible for collecting commissions from insurance carriers and paying commissions to its licensed sales staff. The agency also generally must be exclusively responsible for processing insurance applications, delivery of insurance policies, and collection of premiums, where consistent with procedures of the relevant insurance carriers.

The bank agency and its agents may seek the same market range and use the same marketing methods as are generally available for a licensed insurance agency that is not affiliated with a bank, provided all marketing property and facilities are located inside the place of 5,000.

An agency in which a bank acquires any ownership interest shall, without any other notice of the Commissioner otherwise required under RSA 402:14-a, be deemed to have undergone a substantial change in managerial control within the meaning of that section so as to require the agency to apply for a new license in accordance with RSA 402:14-a. To advertise any insurance products or services under the bank's name, or to participate in the insurance operation other than by receiving profits from the insurance business, the bank must hold a corporate agent license issued pursuant to RSA 402:16. Like all other agents licensed under RSA 402:16, a bank and its licensed employees must hold the appropriate license for each line of insurance offered by the bank.

IV. ACTIVITIES REQUIRING A LICENSE

A bank or person must be licensed to engage in any of the following: 1) soliciting individuals to purchase insurance or an annuity; 2) collecting premiums; 3) transmitting an application for an annuity or policy of insurance by any transmission medium including telephone, mail, or cybertransmission; 4) negotiating for or placing risks; 5) delivering insurance policies or insurance contracts; or 6) other than in a clerical or ministerial manner, aiding in the transaction of

the insurance or annuities business. Before any bank shall undertake to act as an agent for an insurer, it shall comply with these guidelines and shall also submit to the Commissioner for his approval a general plan under which it proposes to conduct such activity.

Licensure is also required if a bank enters into such a third party relationship and is compensated based on the volume of insurance applications or insurance sales.

V. CONSUMER PROTECTIONS

National banks selling insurance are subject to all applicable consumer protection provisions of New Hampshire law, including RSA Chapter 417, the Unfair Insurance Trade Practices Act and applicable state statutes and regulations regarding privacy and confidential information, unless preempted under federal law. Many of the measures required to protect against possible consumer abuses and unfair competition by a lender who is also selling insurance are included in the federal anti-tying provisions of 12 U.S.C.A. §1972, and the disclosure provisions of the February 15 1994, Interagency Statement on Retail Sales of Nondeposit Investment Products, issued jointly by federal bank regulatory agencies as well as N.H. Banking Department Rule Ban 520 which closely parallels the Interagency Statement. Adherence to these standards will help avoid violations of state law but will not exempt banks acting as agents from compliance with state laws and regulations applicable to insurance agents. Accordingly, all such bank licensees should obtain and familiarize themselves with all of the New Hampshire statutes and regulations governing insurance, RSA 400-A through 420-H, and N.H. Ins 100 through 3100, with particular attention to the Department's administrative and enforcement provisions.

To avoid violations of the N.H. insurance laws, the following guidelines must be followed:

- **Licensed personnel.** All insurance transactions must be conducted by individually licensed agents. Tellers and other bank employees, while located in the routine deposit taking area, may not make general or specific recommendations regarding insurance or annuities products; qualify a customer as eligible to purchase such products; accept orders for such products, even if unsolicited; or perform any other activity that involves the sale of an insurance or annuity product. The licensed bank officer is responsible for the bank's insurance business activities and the processing of all revenue directly related to insurance sales received by the bank. The conduct of the business of insurance by unlicensed bank employees will subject the bank, the responsible officer and the employees who do insurance business to liability for conducting unauthorized insurance as proscribed by RSA 406-B.
- **Authorized carriers.** Banks may offer only approved insurance products of insurance companies authorized to do business in New Hampshire. RSA 402:10 and 11, RSA 406-B:3.

- **No tying of banking and insurance products.** When a bank requires a customer to obtain insurance in connection with a loan and the insurance is available through the bank, sales personnel may inform customers that insurance is available from the bank or its subsidiary. However, banks must strictly comply with the applicable provisions of 12 U.S.C. 1972 prohibiting tying activities and unfair competition with respect to bank employees, employees of any operating subsidiary, or any joint employees of an insurance agency operating from Bank premises. Banks should establish operational procedures to prohibit anti-competitive practices which might suggest to Bank customers that they are required to purchase insurance from the bank or from a designated insurer or agent as a condition of any other bank transaction. Such procedures must, at a minimum, include:
 - Disclosure in writing of the Bank's anti-tying rules and policies to any customer acquiring insurance products while simultaneously applying for Bank credit at the time when the credit customer is first informed that insurance is available from the bank. A bank must obtain a signed acknowledgment of this disclosure from its customer at or before the time of insurance policy issuance.
 - Internal controls to detect any impermissible coercion when offering multiple products or services.
 - Employee training concerning the bank's anti-tying policies.
 - Procedures for responding to all customer allegations regarding tying arrangements.

A bank licensed by the Department shall notify the Department in writing within 10 days of any final judgment or of any final administrative action by a federal agency authorized to enforce the anti-tying provision which finds that the bank or any of its employees committed the violation. Any final and unappealable judgment or final and unappealable administrative action shall be deemed a violation of the New Hampshire insurance code.

- **No discrimination against non-affiliated companies or agents.** A bank may not condition the provision or terms of any bank service upon acquisition of insurance through a particular insurer, agent or broker; reject any required policy solely because such policy has been issued or underwritten by a person who is not associated with such bank or impose any requirement on any agent or broker not associated with the bank that is not imposed on any agent who is associated with such bank. See RSA 408-A:11.

- **No inducements or rebating.** Unless otherwise expressly permitted under 12 U.S.C. § 1972, a bank shall not offer any special benefits, including discounts or rebates, as an inducement to purchase insurance from the bank, nor offer any special benefit, including discounts or rebates, on insurance products in connection with the use of any other bank service or product. RSA 402:39 and 40. A bank shall not offer or confer any discount, rebate, benefit or inducement which is not specified in the policy contract.
- **Separation from deposit activities.** Sales of insurance and annuities must be conducted in a physical location distinct from the area where retail deposits are routinely taken. A bank should enhance physical segregation by such additional appropriate measures as may be necessary to minimize the potential impression that insurance or annuity products are insured by or obligations of the Federal Deposit Insurance Corporation or guaranteed by the bank. In the limited situation where physical considerations prevent sales of insurance products from being conducted in a distinct area, the institution has a heightened responsibility to ensure appropriate measures are in place to minimize customer confusion.
- **Disclosures.** To avoid customer confusion, in addition to all disclosures specifically required by the New Hampshire insurance laws and regulations, that all advertising, promotional material and solicitation, including telemarketing contacts, shall include prominent disclosure that substantively states: a purchase of insurance is not a deposit, is not protected by the Federal Deposit Insurance Corporation or any other agency or instrumentality of the federal government, and is not guaranteed by the bank. (See Interagency Statement; N.H. Ban 520). At the time of sale, the banks shall also provide written disclosures of how to complain to the bank about problems in the sale or solicitation of an insurance product. Insurance products sold by banks, like insurance products sold elsewhere, must include the name, address, and consumer compliant telephone number of the Department.
- **Distribution of revenue.** In distributing any revenue of the insurance sales, care must be taken to avoid any violation of rebating or inducement prohibitions under the New Hampshire insurance laws. For example, a portion of the insurance business revenue may flow to parent companies or holding companies; however, other non-licensed entities or individuals must not be awarded a portion of the insurance business revenue as a reward for referrals. Commissions may not be paid to a person who is not licensed as an insurance agent or broker and may not be paid to an insurance agency, bank, subsidiary, affiliate, or the bank itself unless the organization has obtained an agent's license. This subsection does not apply to assignment of commissions for the sale of credit related products as authorized under RSA 408-A:3 and 8.

- **Compliance.** Banks must develop and implement policies and procedures to ensure that sales activities are conducted in compliance with all applicable laws and regulations and in a manner consistent with this Bulletin. Banks should develop and implement policies and procedures to ensure that insurance product sales activities are conducted in compliance with New Hampshire insurance statutes and regulations. The Commissioner urges particular attention to the requirements of RSA 417, Unfair Trade Practices, and Ins 1000, Claim Settlement. Appropriate procedures for review of a bank's insurance sales program should be developed and incorporated into the institution's internal audit program. Bank personnel involved in selling insurance products must adhere to fair and reasonable sales practices and be subject to effective management and internal audit compliance reviews concerning such practices. Compliance procedures should identify any potential conflicts of interest and the manner in which such conflicts should be addressed. The compliance procedures should also provide for a system to monitor customer complaints and their resolution. Where applicable, compliance procedures also should call for verification that third party sales are being conducted in a manner consistent with the governing agreement with the bank.

The compliance function should be conducted independently of insurance product sales and management activities. Compliance personnel should determine the scope and frequency of review. Findings of compliance reviews should be periodically reported, at a minimum on an annual basis, directly to the bank's board of directors or to a designated committee of the board. These procedures should be adopted whether or not the third party relationship requires the bank to be licensed.

- **Financial Privacy.** Use of customer financial information by a bank is restricted by New Hampshire law and by federal law. The Right to Privacy Act (RSA 359-C) and the Federal Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.) are applicable to use of customer financial information for the purpose of selling insurance.

VI. TO CONTACT THE INSURANCE DEPARTMENT

To obtain an agent's license application or to notify the Insurance Department of a change in ownership of an agency, write to:

New Hampshire Insurance Department
169 Manchester Street
Concord, New Hampshire 03301-5151

To notify consumers of how to file a complaint with the Insurance Department, include the following information:

New Hampshire Insurance Department
169 Manchester Street
Concord, New Hampshire 03301
Telephone: 603-271-2261
Toll-free Number: 1-800-852-3416